

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 452

AN ACT to amend the Indiana Code concerning transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-4-5.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The Indiana twenty-first century research and technology fund is established to provide grants or loans to support proposals for economic development in one (1) or more of the following areas:

- (1) To increase the capacity of Indiana institutions of higher education, Indiana businesses, and Indiana nonprofit corporations and organizations to compete successfully for federal or private research and development funding.
- (2) To stimulate the transfer of research and technology into marketable products.
- (3) To assist with diversifying Indiana's economy by focusing investment in biomedical research and biotechnology, information technology, and other high technology industry clusters requiring high skill, high wage employees.
- (4) To encourage an environment of innovation and cooperation among universities and businesses to promote research activity.

(b) The fund shall be administered by the budget agency. The fund consists of:

- (1) appropriations from the general assembly;
- (2) **proceeds of bonds issued by the Indiana development finance authority under IC 4-4-11.4 for deposit in the fund;**

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and

(3) gifts and grants to the fund.

The budget agency shall review each recommendation. The budget agency, after review by the budget committee, may approve, deny, or modify grants and loans recommended by the board. Money in the fund may not be used to provide a recurring source of revenue for the normal operating expenditures of any project.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) The money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for the purposes of this chapter.

SECTION 2. IC 4-4-5.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The board has the following powers:

(1) To accept, analyze, and approve applications under this chapter.

(2) To contract with experts for advice and counsel.

(3) To employ staff to assist in carrying out this chapter, including providing assistance to applicants who wish to apply for a grant or loan from the fund, analyzing proposals, working with experts engaged by the board, and preparing reports and recommendations for the board.

(4) To approve and recommend applications for grants or loans from the fund to the budget committee and budget agency.

(b) The board shall give priority to applications for grants or loans from the fund that:

(1) have the greatest economic development potential; and

(2) require the lowest ratio of money from the fund compared with the combined financial commitments of the applicant and those cooperating on the project.

(c) The board shall make final funding determinations for applications for grants or loans from the fund that will be submitted to the budget agency for review and approval. In making a determination on a proposal intended to obtain federal or private research funding, the board shall be advised by a peer review panel and shall consider the following factors in evaluating the proposal:

(1) The scientific merit of the proposal.

(2) The predicted future success of federal or private funding for the proposal.

(3) The ability of the researcher to attract merit based scientific

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funding of research.

(4) The extent to which the proposal evidences interdisciplinary or inter-institutional collaboration among two (2) or more Indiana institutions of higher education or private sector partners, as well as cost sharing and partnership support from the business community.

The purposes for which grants and loans may be made include erecting, constructing, reconstructing, extending, remodeling, improving, completing, equipping, and furnishing research and technology transfer facilities.

(d) The peer review panel shall be chosen by and report to the board. In determining the composition and duties of a peer review panel, the board shall consider the National Institutes of Health and the National Science Foundation peer review processes as models. The members of the panel must have extensive experience in federal research funding. A panel member may not have a relationship with any private entity or academic institution in Indiana that would constitute a conflict of interest for the panel member.

(e) In making a determination on any other application for a grant or loan from the fund involving a proposal to transfer research results and technologies into marketable products or commercial ventures, the board shall consult with experts as necessary to analyze the likelihood of success of the proposal and the relative merit of the proposal.

SECTION 3. IC 4-4-11-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) The authority is granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes under this chapter, IC 4-4-21, and IC 15-7-5, including but not limited to the following:

- (1) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions.
- (2) Without complying with IC 4-22-2, adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with this chapter, IC 4-4-21, and IC 15-7-5 and necessary or convenient to regulate its affairs and to carry into effect the powers, duties, and purposes of the authority and conduct its business.
- (3) Sue and be sued in its own name.
- (4) Have an official seal and alter it at will.
- (5) Maintain an office or offices at a place or places within the state as it may designate.
- (6) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the

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exercise of its powers and functions under this chapter, IC 4-4-21, and IC 15-7-5.

(7) Employ architects, engineers, attorneys, inspectors, accountants, agriculture experts, silviculture experts, aquaculture experts, and financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation.

(8) Procure insurance against any loss in connection with its property and other assets, including loans and loan notes in amounts and from insurers as it may consider advisable.

(9) Borrow money, make guaranties, issue bonds, and otherwise incur indebtedness for any of the authority's purposes, and issue debentures, notes, or other evidences of indebtedness, whether secured or unsecured, to any person, as provided by this chapter, IC 4-4-21, **IC 4-4-11.4**, and IC 15-7-5.

(10) Procure insurance or guaranties from any public or private entities, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority or for reinsurance on amounts paid from the industrial development project guaranty fund, including the power to pay premiums on any insurance or reinsurance.

(11) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, and accept, from any source, aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter, IC 4-4-21, and IC 15-7-5, subject to the conditions upon which the grants or contributions are made, including but not limited to gifts or grants from any department, agency, or instrumentality of the United States, and lease or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, for any purpose consistent with this chapter, IC 4-4-21, or IC 15-7-5.

(12) Enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders and enter into loan agreements, sales contracts, and leases with contracting parties, including borrowers, lenders, developers, or users, for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise (as defined in IC 15-7-4.9-2), rural development project (as defined in IC 15-7-4.9-19.5), industrial development project, or international exports, and distribute data and information

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concerning the encouragement and improvement of agricultural enterprises and agricultural employment, rural development projects, industrial development projects, international exports, and other types of employment in the state undertaken with the assistance of the authority under this chapter.

(13) Enter into contracts or agreements with lenders and lessors for the servicing and processing of loans and leases pursuant to this chapter, IC 4-4-21, and IC 15-7-5.

(14) Provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of agricultural enterprises, rural development projects, and industrial development projects.

(15) To the extent permitted under its contract with the holders of the bonds of the authority, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party.

(16) To the extent permitted under its contract with the holders of bonds of the authority, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise, rural development project, or industrial development project being financed.

(17) Invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to IC 5-13, or any obligations or securities which are permitted investments for bond proceeds or any construction, debt service, or reserve funds secured under the trust indenture or resolution pursuant to which bonds are issued.

(18) Collect fees and charges, as the authority determines to be reasonable, in connection with its loans, guarantees, advances, insurance, commitments, and servicing.

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(19) Cooperate and exchange services, personnel, and information with any federal, state, or local government agency, or instrumentality of the United States or this state.

(20) Sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority.

(21) Enter into agreements concerning, and acquire, hold, and dispose by any lawful means, land or interests in land, building improvements, structures, personal property, franchises, patents, accounts receivable, loans, assignments, guarantees, and insurance needed for the purposes of this chapter, IC 4-4-21, or IC 15-7-5.

(22) Take assignments of accounts receivable, loans, guarantees, insurance, notes, mortgages, security agreements securing notes, and other forms of security, attach, seize, or take title by foreclosure or conveyance to any industrial development project when a guaranteed loan thereon is clearly in default and when in the opinion of the authority such acquisition is necessary to safeguard the industrial development project guaranty fund, and sell, or on a temporary basis, lease, or rent such industrial development project for any use.

(23) Expend money, as the authority considers appropriate, from the industrial development project guaranty fund created by section 16 of this chapter.

(24) Purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve industrial development projects, including land, machinery, equipment, or any combination thereof.

(25) Lease industrial development projects to users or developers, with or without an option to purchase.

(26) Sell industrial development projects to users or developers, for consideration to be paid in installments or otherwise.

(27) Make direct loans from the proceeds of the bonds to users or developers for:

(A) the cost of acquisition, construction, or installation of industrial development projects, including land, machinery, equipment, or any combination thereof; or

(B) eligible expenditures for an educational facility project described in IC 4-4-10.9-6.2(a)(2);

with the loans to be secured by the pledge of one (1) or more bonds, notes, warrants, or other secured or unsecured debt obligations of the users or developers.

(28) Lend or deposit the proceeds of bonds to or with a lender for

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the purpose of furnishing funds to such lender to be used for making a loan to a developer or user for the financing of industrial development projects under this chapter.

(29) Enter into agreements with users or developers to allow the users or developers, directly or as agents for the authority, to wholly or partially construct industrial development projects to be leased from or to be acquired by the authority.

(30) Establish reserves from the proceeds of the sale of bonds, other funds, or both, in the amount determined to be necessary by the authority to secure the payment of the principal and interest on the bonds.

(31) Adopt rules governing its activities authorized under this chapter, IC 4-4-21, and IC 15-7-5.

(32) Use the proceeds of bonds to make guaranteed participating loans.

(33) Purchase, discount, sell, and negotiate, with or without guaranty, notes and other evidences of indebtedness.

(34) Sell and guarantee securities.

(35) Make guaranteed participating loans under IC 4-4-21-26.

(36) Procure insurance to guarantee, insure, coinsure, and reinsure against political and commercial risk of loss, and any other insurance the authority considers necessary, including insurance to secure the payment of principal and interest on notes or other obligations of the authority.

(37) Provide performance bond guarantees to support eligible export loan transactions, subject to the terms of this chapter or IC 4-4-21.

(38) Provide financial counseling services to Indiana exporters.

(39) Accept gifts, grants, or loans from, and enter into contracts or other transactions with, any federal or state agency, municipality, private organization, or other source.

(40) Sell, convey, lease, exchange, transfer, or otherwise dispose of property or any interest in property, wherever the property is located.

(41) Cooperate with other public and private organizations to promote export trade activities in Indiana.

(42) Make guarantees and administer the agricultural loan and rural development project guarantee fund established by IC 15-7-5.

(43) Take assignments of notes and mortgages and security agreements securing notes and other forms of security, and attach, seize, or take title by foreclosure or conveyance to any

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agricultural enterprise or rural development project when a guaranteed loan to the enterprise or rural development project is clearly in default and when in the opinion of the authority the acquisition is necessary to safeguard the agricultural loan and rural development project guarantee fund, and sell, or on a temporary basis, lease or rent the agricultural enterprise or rural development project for any use.

(44) Expend money, as the authority considers appropriate, from the agricultural loan and rural development project guarantee fund created by IC 15-7-5-19.5.

(45) Reimburse from bond proceeds expenditures for industrial development projects under this chapter.

(46) Do any act necessary or convenient to the exercise of the powers granted by this chapter, IC 4-4-21, or IC 15-7-5, or reasonably implied from those statutes, including but not limited to compliance with requirements of federal law imposed from time to time for the issuance of bonds.

(b) The authority's powers under this chapter shall be interpreted broadly to effectuate the purposes of this chapter and may not be construed as a limitation of powers.

(c) This chapter does not authorize the financing of industrial development projects for a developer unless any written agreement that may exist between the developer and the user at the time of the bond resolution is fully disclosed to and approved by the authority.

SECTION 4. IC 4-4-11.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 11.4. Additional Authority: Twenty-First Century Research and Technology Fund

Sec. 1. As used in this chapter, "authority" refers to the Indiana development finance authority.

Sec. 2. As used in this chapter, "bonds" means any bonds, notes, debentures, interim certificates, revenue anticipation notes, warrants, or any other evidences of indebtedness of the authority.

Sec. 3. As used in this chapter, "financial institution" means a financial institution (as defined in IC 28-1-1).

Sec. 4. As used in this chapter, "holder" means a person who is the:

- (1) bearer of any outstanding bond or note registered to bearer or not registered; or
- (2) registered owner of any outstanding bond or note that is registered other than to bearer.

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Sec. 5. As used in this chapter, "person" means any individual, partnership, firm, association, joint venture, limited liability company, or corporation.

Sec. 6. As used in this chapter, "reserve fund" means a reserve fund established under section 15 of this chapter.

Sec. 7. (a) The authority may issue its bonds in principal amounts that the authority considers necessary to provide funds for the purposes under this chapter, including the following:

(1) Providing a source of money for the Indiana twenty-first century research and technology fund established by IC 4-4-5.1-3.

(2) Payment, funding, or refunding of the principal of, or interest or redemption premiums on, bonds issued by the authority under this chapter whether the bonds or interest to be paid, funded, or refunded have or have not become due.

(3) Establishment or increase of reserves to secure or to pay bonds or interest on bonds and all other costs or expenses of the authority incident to and necessary or convenient to carry out the authority's corporate purposes and powers under this chapter.

(b) Every issue of bonds shall be obligations of the authority payable solely out of the revenues or funds of the authority under section 15 of this chapter, subject to agreements with the holders of a particular series of bonds pledging a particular revenue or fund. Bonds may be additionally secured by a pledge of a grant or contributions from the United States, a political subdivision, or a person, or by a pledge of income or revenues, funds, or money of the authority from any source.

Sec. 8. (a) A bond of the authority:

(1) is not a debt, liability, loan of the credit, or pledge of the faith and credit of the state or of any political subdivision;

(2) is payable solely from the money pledged or available for its payment under this chapter, unless funded or refunded by bonds of the authority; and

(3) must contain on its face a statement that the authority is obligated to pay principal and interest, and redemption premiums, if any, and that the faith, credit, and taxing power of the state are not pledged to the payment of the bond.

(b) The state pledges to and agrees with the holders of the bonds issued under this chapter that the state will not:

(1) limit or restrict the rights vested in the authority to fulfill the terms of any agreement made with the holders of its

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bonds; or

(2) in any way impair the rights or remedies of the holders of the bonds;

until the bonds, together with the interest on the bonds, and interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met, paid, and discharged.

Sec. 9. The bonds of the authority are negotiable instruments for all purposes of the Uniform Commercial Code (IC 26), subject only to the provisions of the bonds for registration.

Sec. 10. (a) Bonds of the authority must be authorized by resolution of the authority, may be issued in one (1) or more series, and must:

- (1) bear the date;
- (2) mature at the time or times;
- (3) be in the denomination;
- (4) be in the form;
- (5) carry the conversion or registration privileges;
- (6) have the rank or priority;
- (7) be executed in the manner;
- (8) be payable from the sources in the medium of payment at the place inside or outside Indiana; and
- (9) be subject to the terms of redemption;

as the resolution of the authority or the trust agreement securing the bonds provides.

(b) Bonds may be issued under this chapter without obtaining the consent of any state agency and without any other proceeding or condition other than the proceedings or conditions specified in this chapter. However, the total principal of all outstanding bonds issued under this chapter may not exceed one billion dollars (\$1,000,000,000). Not more than two hundred million dollars (\$200,000,000) in bonds may be issued in any state fiscal year. Bonds issued before July 1, 2007, must provide that debt principal and other debt service payments are not required before July 1, 2007. Bonds may not be issued under this chapter after June 30, 2011, other than bonds issued to refinance bonds originally issued before July 1, 2011.

(c) The rate or rates of interest on the bonds may be fixed or variable. Variable rates shall be determined in the manner and in accordance with the procedures set forth in the resolution authorizing the issuance of the bonds. Bonds bearing a variable rate of interest may be converted to bonds bearing a fixed rate or

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rates of interest, and bonds bearing a fixed rate or rates of interest may be converted to bonds bearing a variable rate of interest, to the extent and in the manner set forth in the resolution pursuant to which the bonds are issued. The interest on bonds may be payable semiannually or annually or at any other interval or intervals as may be provided in the resolution, or the interest may be compounded and paid at maturity or at any other times as may be specified in the resolution.

(d) The bonds may be made subject to mandatory redemption by the authority at the times and under the circumstances set forth in the authorizing resolution.

Sec. 11. Bonds of the authority may be sold at public or private sale at the price the authority determines. If bonds of the authority are to be sold at public sale, the authority shall publish notice of the sale for two (2) weeks in two (2) newspapers published and of general circulation in Indianapolis.

Sec. 12. The authority may periodically issue its bonds under this chapter and pay and retire the principal of the bonds or pay the interest due thereon or fund or refund the bonds from proceeds of bonds, or from other funds or money of the authority available for that purpose in accordance with a contract between the authority and the holders of the bonds.

Sec. 13. (a) In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside Indiana.

(b) The trust agreement or the resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of any such bonds as are reasonable and proper and not in violation of law.

(c) The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by the holders.

(d) In addition to the provisions of subsections (a), (b), and (c), any trust agreement or resolution may contain other provisions the authority considers reasonable and proper for the security of the holders of any bonds.

(e) All expenses incurred in carrying out the trust agreement or resolution may be paid from revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the authority.

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Sec. 14. The authority may purchase bonds of the authority out of the authority's funds or money available for the purchase of its own bonds. The authority may hold, cancel, or resell the bonds subject to, and in accordance with, agreements with holders of its bonds. Unless canceled, bonds held by the authority are considered to be held for resale or transfer and the obligation evidenced by the bonds shall not be considered to be extinguished.

Sec. 15. (a) The authority may establish and maintain a debt service fund, and if necessary, a reserve fund, for each issue of bonds in which there shall be deposited or transferred:

- (1) all money appropriated by the general assembly for the purpose of the fund in accordance with section 18(a) of this chapter;
- (2) all proceeds of bonds required to be deposited in the fund by terms of a contract between the authority and its holders or a resolution of the authority with respect to the proceeds of bonds;
- (3) all other money appropriated by the general assembly to the funds; and
- (4) any other money or funds of the authority that the authority decides to deposit in either fund.

(b) Subject to section 18(b) of this chapter, money in any reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds of the authority as the interest and principal become due and payable and for the retirement of bonds.

(c) Money in any reserve fund in excess of the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds.

Sec. 16. Money in any reserve fund may be invested in the manner provided in the trust agreement or the resolution authorizing issuance of the bonds.

Sec. 17. For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution or trust agreement of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the money or investments in the reserve fund.

Sec. 18. (a) In order to assure the payment of debt service on bonds of the authority issued under this chapter or maintenance of the required debt service reserve in any reserve fund, the general

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assembly may annually or biannually appropriate to the authority for deposit in one (1) or more of the funds the sum, certified by the chairman of the authority to the general assembly, that is necessary to pay the debt service on the bonds or to restore one (1) or more of the funds to an amount equal to the required debt service reserve. The chairman annually, before December 1, shall make and deliver to the general assembly the chairman's certificate stating the sum required to pay debt service on the bonds or to restore one (1) or more of the funds to an amount equal to the required debt service reserve. This subsection does not create a debt or liability of the state to make any appropriation.

(b) All amounts received on account of money appropriated by the state to any fund shall be held and applied in accordance with section 15(b) of this chapter. However, at the end of each fiscal year, if the amount in any fund exceeds the debt service or required debt service reserve, any amount representing earnings or income received on account of any money appropriated to the funds that exceeds the expenses of the authority for that fiscal year may be transferred to the Indiana twenty-first century research and technology fund established by IC 4-4-5.1-3.

Sec. 19. Subject to any agreement with its holders, the authority may combine a reserve fund established for an issue of bonds into one (1) or more reserve funds.

Sec. 20. The authority may establish additional reserves or other funds or accounts as the authority considers necessary, desirable, or convenient to further the accomplishment of the authority's purposes or to comply with any of the authority's agreements or resolutions.

Sec. 21. Unless the resolution or trust agreement authorizing the bonds provides otherwise, money or investments in a fund or account of the authority established or held for the payment of bonds shall be applied to the payment or retirement of the bonds, and to no other purpose.

Sec. 22. (a) An action to contest the validity of any bonds of the authority to be sold at public sale may not be brought after the fifteenth day following the first publication of notice of the sale of the bonds. An action to contest the validity of any bond sale under this chapter may not be brought after the fifth day following the bond sale.

(b) If bonds are sold at private sale, an action to contest the validity of such bonds may not be brought after the fifteenth day following the adoption of the resolution authorizing the issuance of

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the bonds.

(c) If an action challenging the bonds of the authority is not brought within the time prescribed by subsection (a) or (b), whichever is applicable, all bonds of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and a person or a qualified entity is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.

(d) If this chapter is inconsistent with any other law (general, special, or local), this chapter controls.

Sec. 23. All property of the authority is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the property. A judgment against the authority may not be a charge or lien upon its property. However, this section does not apply to or limit the rights of the holder of bonds to pursue a remedy for the enforcement of a pledge or lien given by the authority on the authority's revenues or other money.

Sec. 24. A pledge of revenues or other money made by the authority is binding from the time the pledge is made. Revenues or other money so pledged and thereafter received by the authority are immediately subject to the lien of the pledge without any further act, and the lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created needs to be filed or recorded except in the records of the authority.

Sec. 25. The chairman of the authority may receive from the United States of America or any department or agency thereof, or any state agency any amount of money as and when appropriated, allocated, granted, turned over, or in any way provided for the purposes of the authority or this chapter, and those amounts shall, unless otherwise directed by the federal authority, be credited to and be available to the authority.

Sec. 26. A financial institution may give to the authority a good and sufficient undertaking with such sureties as are approved by the authority to the effect that the financial institution shall faithfully keep and pay over to the order of or upon the warrant of the authority or the authority's authorized agent all those funds deposited with the financial institution by the authority and agreed interest under or by reason of this chapter, at such times or upon such demands as may be agreed with the authority or instead of

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these sureties, deposit with the authority or the authority's authorized agent or a trustee or for the holders of bonds, as collateral, those securities as the authority may approve. The deposits of the authority may be evidenced by an agreement in the form and upon the terms and conditions that may be agreed upon by the authority and the financial institution.

Sec. 27. The authority may enter into agreements or contracts with a financial institution inside or outside Indiana as the authority considers necessary, desirable, or convenient for rendering services in connection with the care, custody, or safekeeping of securities or other investments held or owned by the authority, for rendering services in connection with the payment or collection of amounts payable as to principal or interest, and for rendering services in connection with the delivery to the authority of securities or other investments purchased by or sold by the authority, and to pay the cost of those services. The authority may also, in connection with any of the services to be rendered by a financial institution as to the custody and safekeeping of its securities or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, the authority considers necessary or desirable.

Sec. 28. Notwithstanding the restrictions of any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds issued under this chapter.

Sec. 29. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments, direct or indirect, of the state or a political subdivision of the state. All bonds issued under this chapter are issued by a body corporate and public of the state, but not a state agency, and for an essential public and governmental purpose and the bonds, the interest thereon, the proceeds received by a holder from the sale of the bonds to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, and proceeds received at maturity and the receipt of the interest and proceeds are exempt from taxation in the state for all purposes except a state inheritance tax imposed under IC 6-4.1.

Sec. 30. Any bonds issued by the authority under this chapter are exempt from the registration and other requirements of

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IC 23-2-1 and any other securities registration laws.

Sec. 31. This chapter is supplemental to all other statutes governing the authority.

SECTION 5. IC 8-10-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Revenue bonds issued under the provisions of this article: ~~shall~~

(1) ~~do not be deemed to~~ constitute a debt of **the commission**, the state, or ~~of any political subdivision thereof of the state~~, or a pledge of the faith and credit of **the commission**, the state, or ~~of any such political subdivision but such bonds shall be of the state;~~

(2) **are** payable solely from the funds pledged for their payment as authorized in this article, unless ~~such the~~ bonds are refunded by refunding bonds issued under the provisions of this chapter, which ~~refunding bonds~~ shall be payable solely from funds pledged for their payment as authorized herein. ~~All such revenue bonds shall in this article; and~~

(3) **must** contain on ~~the their~~ face ~~thereof~~ a statement to the effect that the bonds, as to both principal and interest, are not an obligation of **the commission**, the state, ~~of Indiana~~, or of any political subdivision ~~thereof, of the state~~, but are payable solely from revenues pledged for their payment.

All expenses incurred in carrying out the provisions of this article ~~shall be~~ **are** payable solely from funds provided under the authority of this article and nothing in this article ~~contained~~ shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by the state or any political subdivision ~~thereof, of the state.~~

SECTION 6. IC 8-10-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The commission is hereby authorized and empowered to acquire by purchase whenever it shall deem such purchase expedient, any land, property, rights, ~~right-of-ways,~~ **rights of way**, franchises, easements, and other interests in lands, including lands under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any port or project, upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the commission and the owner thereof, and to take title thereto in the name of the state.

(b) The commission is hereby further authorized and empowered to sell, transfer, and convey any such land or any interest therein so acquired, or any portion thereof, when the same shall no longer be needed for such purposes. The commission is further authorized and

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empowered to transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any port or project, or as otherwise required under the provisions of this article. However, no such sale shall be made without first obtaining the approval of the governor, and a sale may not be made at less than the appraised value established by three (3) independent appraisers appointed by the governor. The commission shall be authorized to restrict the use of any land so sold by it and provide for a reversion to the commission in the event the land shall not be used for the purpose represented by the purchaser, and such restrictions and reversions shall be set out in appropriate covenants in the deeds of conveyance, which deeds shall be subject to the approval of the governor.

(c) The commission shall also be authorized to lease, or grant options to lease, to others for development any portion of the land owned by the commission, on such terms as the commission shall determine to be advantageous. All such leases or options to lease which leases cover a period of more than four (4) years shall be subject to the approval of the governor. Leases of lands under the jurisdiction or control of the commission shall be made only for such uses and purposes as are calculated to contribute to the growth and development of ports, terminal facilities, and projects under the jurisdiction or control of the commission. In the event the commission shall lease to others a building or structure financed by the issuance of revenue bonds under IC 8-10-4, ~~the rental shall be in an amount at least sufficient to pay the interest on and principal of the amount of such bonds representing the cost of such building or structure to the extent such interest and principal is payable during the term of the lease, as well as to pay the cost of maintenance, repair and insurance for such building and a reasonable portion of the commission's administrative expense incurred during the term of the lease which is allocable to such building or structure.~~ **transaction must be structured as a self-liquidating or nonrecourse project (as defined in IC 8-10-4-1).**

(d) No tenant, lessee, licensee, owner of real estate located within a port or project, or other person or entity has any right, claim, title, or interest in any real estate, personal property, or common property owned by the commission, a port, a project, or the state, unless a written agreement entered into by the commission expressly provides:

- (1) the exact nature and extent of the right, claim, title, or interest;
- (2) all the conditions under which the right, claim, title, or interest is granted; and
- (3) a legal or complete description of the specific property.

SECTION 7. IC 8-10-1-16 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. In the discretion of the commission any bonds issued under the provisions of this act may be secured by a trust agreement by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the state, except as provided in IC 8-10-4. Any resolution adopted by the commission providing for the issuance of revenue bonds and any trust agreement pursuant to which such bonds are issued may pledge or assign all or any portion of the revenues received or to be received by the commission except such part as may be necessary to pay the cost of the commission's administrative expenses, operation, maintenance and repair and to provide reserves therefor and depreciation reserves required by any bond resolution adopted or trust agreement executed by the commission, but the commission shall not convey or mortgage any port or project or any part thereof, except for self liquidating **or nonrecourse** projects under IC 8-10-4. In authorizing the issuance of bonds for any particular port or project, the commission may limit the amount of such bonds that may be issued as a first lien and charge against the revenues pledged to the payment of such bonds or the commission may authorize the issuance from time to time thereafter of additional bonds secured by the same lien to provide funds for the completion of the port or project on account of which the original bonds were issued, or to provide funds to pay the cost of additional projects undertaken in connection with the development of the port or project, or for both such purposes. Such additional bonds shall be issued on such terms and conditions as may be provided in the bond resolution or resolutions adopted by the commission and in the trust agreement or any agreement supplemental thereto and may be secured equally and ratably without preference, priority or distinction with the original issue of bonds or may be made junior thereto. Any pledge or assignment made by the commission pursuant hereto shall be valid and binding from the time that the pledge or assignment is made and the revenues so pledged and thereafter received by the commission shall immediately be subject to the lien of such pledge or assignment without physical delivery thereof or further act. The lien of such pledge or assignment shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the commission irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created or assignment made need be filed or recorded except in the records of the commission. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of

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the bondholders as may be reasonable and proper and not in violation of law, including, but not limited to, covenants setting forth the duties of the commission in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the port or project in connection with which such bonds shall have been authorized, the rates of fees, tolls, rentals or other charges, to be collected for the use of the project, and the custody, safeguarding and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation of such project. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or other funds of the commission, to furnish such indemnifying bonds or to pledge such securities as may be required by the commission. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such other provisions as the commission may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the port or project.

SECTION 8. IC 8-10-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) As used in this chapter, "self-liquidating **or nonrecourse** project" ~~shall mean means:~~

(1) a project for which a lease or leases have been executed providing for payment ~~of rental~~ in an amount ~~at least the~~ **commission determines to be** sufficient to pay:

(A) the interest and principal of ~~such the~~ bonds to be issued to finance the cost of ~~such the~~ project; and ~~further providing for the payment by the lessee or lessees of~~

(B) all costs of maintenance, repair, and insurance of ~~such the~~ project; **or**

(2) **a project that is structured in such a manner that the commission determines there is no recourse against the state or the Indiana port commission.**

(b) Other words and terms used in this chapter shall have the same meaning as in other provisions of this article, unless otherwise specifically provided.

SECTION 9. IC 8-10-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. In addition to the powers

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conferred upon the Indiana port commission by other provisions of this article, the commission, in connection with any self-liquidating **or nonrecourse** project, shall have the following powers notwithstanding any other provision of this article to the contrary:

~~(a)~~ **(1)** The revenue bonds issued by the commission to finance the cost of such self-liquidating **or nonrecourse** project may be issued without regard to any maximum interest rate limitation in this article or any other law.

~~(b)~~ **(2)** The revenue bonds issued by the commission to finance the cost of such self-liquidating **or nonrecourse** project may be sold in such manner, either at public or private sale, as the commission may determine, and the provisions of IC 4-1-5 shall not be applicable to such sale.

~~(c)~~ **(3)** IC 4-13.6, IC 5-16-1, IC 5-16-2, IC 5-16-3, IC 5-16-5, IC 5-16-5.5, IC 5-16-6, IC 5-16-6.5, IC 5-16-8, IC 5-16-9, IC 5-16-10, IC 5-16-11, IC 5-16-11.1, IC 8-10-1-7(12), IC 8-10-1-29, and IC 36-1-12 do not apply to a **self-liquidating or nonrecourse** project. ~~to be leased to a private party whose payments are expected to be sufficient to pay all debt service on bonds issued by the commission to finance the project.~~

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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